

Andrew N. Krinsky (AK 0997)  
 Linda S. Roth (LR 8255)  
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*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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BRUCE M. MEISEL,	:	
	:	07 Civ. 11610 (PKL)
Plaintiff,	:	
	:	
-against-	:	<b>SUPPLEMENTAL</b>
	:	<b>AFFIDAVIT OF</b>
MICHAEL GRUNBERG,	:	<b><u>LINDA S. ROTH</u></b>
FANNY GRUNBERG,	:	
and ARIEL GRUNBERG,	:	
	:	
Defendants.	:	
-----X		

STATE OF NEW YORK     )  
                                   ss.:  
 COUNTY OF NEW YORK    )

**LINDA S. ROTH**, being duly sworn deposes and says:

1. I am an attorney duly admitted to practice in the State of New York and Counsel to Tarter Krinsky & Drogin LLP, attorneys for defendants Michael Grunberg, Fanny Grunberg and Ariel Grunberg. I submit this supplemental affidavit with the permission of the Court in further support of defendants' motion to dismiss the Complaint herein. In particular, this affidavit is submitted in further support of defendants' motion to dismiss plaintiff's purported fraud and negligent misrepresentation claims.

2. Attached as Exhibit A is a true and complete copy of a letter dated November 8, 2004 from Jerome N. Block ("Block") to plaintiff, Bruce M. Meisel, Esq. ("Meisel").

3. Attached as Exhibit B is a true and complete copy of a memorandum/letter dated January 9, 2005 from Meisel to Block.

4. Attached as Exhibit C is a true and complete copy of a memorandum/letter dated March 23, 2005 from Meisel to Block.

5. Attached as Exhibit D is a true and complete copy of an email dated March 26, 2005 from Meisel to Block.

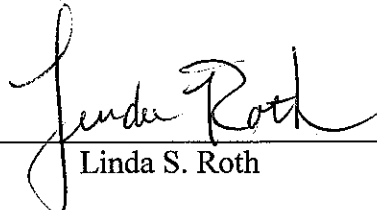
6. Attached as Exhibit E is a true and complete copy of an email dated March 26, 2005 from Block to Meisel and an email dated March 27, 2005 from Meisel to Block.

7. Attached as Exhibit F is a true and complete copy of an email dated April 13, 2005 from Meisel to Block and a responsive email dated April 13, 2005 from Block to Meisel.

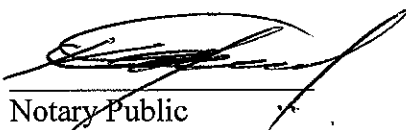
10. Attached as Exhibit G is a true and complete copy of a series of emails dated May 11, 2005 and May 12, 2005 between Meisel and Block.

11. All of the documents attached to this affidavit were produced to defendants by plaintiff and, upon information and belief, were available to and in plaintiff's possession at the time he filed the Complaint herein.

**WHEREFORE**, it is respectfully requested that defendants' motion to dismiss the Complaint for failure to state a claim be granted.

  
\_\_\_\_\_  
Linda S. Roth

Sworn to before me this 14<sup>th</sup> day  
of August, 2008

  
\_\_\_\_\_  
Notary Public

Karen Menendez  
Notary Public, State of New York  
No. 01ME6187810  
Qualified in Queens County  
Commission Expires May 27, 2012

**EXHIBIT A**



November 8, 2004

Bruce M. Meisel, Esquire  
263 Center Avenue  
P.O. Box 66  
Westwood, New Jersey 07675

Re: 15-19 West 55<sup>th</sup> Street  
New York, New York

Dear Bruce,

It was good to see you once again last Wednesday in my office and meet with your brother in law, Marty Levine, as well.

Here is the list of brokers and attorneys which I said I would compile and send to you. While they're all good, I have my own ideas who I think would be best suited for you, this type of property, the issue, and of greater importance, the parties on the other side of the table. Call me when you've perused the list.

Brokers

- ① Bob Knakal – Massey Knakal
- + Brian Ezratty – Eastern Consolidated Properties
- ① Sidney Rosenthal – Grubb & Ellis

Attorneys

Roger Cohen – Sole practioner



Leonard Boxer – Stroock, Stroock & Lavan LLP

Mark J. Sugarman – Bryan Cave LLP

I look forward to hearing from you.

WILROCK APPRAISAL AND CONSULTING INC.

Jerome N. Block, MAI  
President

**EXHIBIT B**

**BRUCE M. MEISEL**  
Counsellor at Law

263 Center Avenue  
P.O. Box 66  
Westwood, New Jersey 07675  
(201) 666-7500

Member N.J. & N.Y. Bar

Facsimile: (201) 666-4356  
e-mail: [Meiselps@covad.net](mailto:Meiselps@covad.net)

To: Jerry Block

Date: January 9, 2005

Dear Jerry:

In furtherance of the telephone conversation you and I had before the holidays, I am attaching an e-mail I received yesterday from Michael Grunberg and my reply to him of today.

My intent would be to bring you with me to the meeting with Grunberg that I am proposing be scheduled during the first week in February.

First, are you available? Second, I would like to talk with you about how we should introduce the idea of my bringing you with me to the meeting.

I assume he would like to buy me out at a deep discount. I would like to get him to sell the whole property or if he doesn't want to do that but he wants me out then we have to arrive at a price that is reasonable, which I think is going to be hard for him.

I will be in the office tomorrow except between noon and 2:00.

Thanks.



**EXHIBIT C**

**BRUCE M. MEISEL**  
Counsellor at Law  
P.O. Box 66  
Westwood, New Jersey 07675  
(201) 666-7500

Member N.J. & N.Y. Bar

Facsimile: (201) 666-4356  
e-mail: [Meiselna@covad.net](mailto:Meiselna@covad.net)

To: Jerry Block

Date: March 23, 2005

Re: 15-19 W. 55<sup>th</sup> Street

I very much appreciated your taking the time, and energy after a long day of meetings, to stop by to discuss my meeting with Michael Grunberg.

Yesterday's meeting with Michael was the first time we actually had a construction partnership meeting. Implicit in the meeting was their abandonment of a strategy of hoping that I was ignorant of the market place valuations.

I believe that it is a 50/50 likelihood that if presented with an offer they couldn't refuse generated by us that they might participate in a sale at this time. Getting an expression of interest at a price from a real buyer is critical in that it will result in either (a) a movement to sell or (b) a means of fixing the total value and thereby the value of my partnership interest. If you could engineer this and, if possible, let me know about when receipt of such an expression of interest could be received, that would be really, really helpful.

On one hand, I agree with you that time is on my side. The thought occurred to me that they have now realized that with every passing day and increase in rental income, the value of my interest, which they now understand that I know is pegged to gross rent roll, increases. Therefore, time is not on their side. On the other hand, I don't want to push this too far as the market could easily start to turn as interest rates rise.

Bruce

**EXHIBIT D**

From: Bruce M. Meisel <Meiselpa@covad.net>  
To: jerry block <jnblock@aol.com>  
Sent: Sat, 26 Mar 2005 10:42:09 -0500  
Subject:

Good morning.

I was pretty tired yesterday after my meeting with MG because when you meet with that type of person it takes everything out of you just trying to stay on course and keep the exchanges in the real world and not the world they would like to create. The way they negotiate, and I am sure you understand this from your experience, is that they try to create their own subjective reality that touches on fact but then materially deviates from it in reaching a conclusion.

I operate from logic and reason. Simply put, their number for my interest assumes a multiple of roll that is in the 8 to 10x range. For a triple A location, 10 to 12x has always been a constant so I can always get that. They are telling me that it is an exuberant market but they essentially don't want to recognize that in valuing my interest only theirs. Interesting. Frankly, instinctively, the number I threw out of \$29 to \$30m split the difference traditional valuation and exuberant valuation and is absolutely fair, which is probably the problem for them. The suggestion is grounded in logic and the long and short term market realities.

I think getting an offer in writing is key. I am still hopeful that there is an outside possibility that they will agree to sell.

Bruce

M154

3/27/2005

**EXHIBIT E**

**Bruce M. Meisel**

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**From:** "Bruce M. Meisel" <Meiselpa@Covad.net>  
**To:** <jnblock@aol.com>  
**Sent:** Sunday, March 27, 2005 12:09 PM  
**Subject:** Re: 55th Street

Jerry:

Correct me if I am wrong, but when I read the Massey-Knakal report, it appears to me that the \$2,085,828 annual rent roll does NOT include 8 vacancies in building 15 and one vacancy and a supt.'s 6th floor apartment in building 19. The vacancies are all in the A line units, which are the largest and most desirable units. In fact that is the unit Fanny Grunberg occupies although her unit is listed as "vacant" in the report along with the other two units on the 8th floor so the entire 8th floor in building 15 is listed as vacant. If these units were in fact rented at an average of as low as \$3,500 to \$4,000 a month, another \$375,000 to \$430,000 would drop to the bottom line, making the annaul rent roll closer to between \$2,460,000 and \$2,517,000. Am I correct on this?

This would mean that a \$25,000,000 number represents a just about 10x the annual rent roll, \$29,000,000 represents 11.6x the annual rent roll and \$34,000,000 represents 13.6x the annual rent roll. Again, am I correct in these numbers?

For at least the last two decades, a prime, prime property has sold for between 10-12x gross rent roll. Therefore, the \$29,000,000 number I threw out actually does not take into account the current exubant market conditions.

You know, Jerry, while I agree the smart real estate money appears to be selling, there is a body of money managers out there who look at the falling dollar and the possibility of serious inflation and think the smart money is acquiring hard assets that increase in value in an inflationary environment.

Frankly, I think Grunberg should have grabbed it when I threw out a number of \$29m.

However, if nothing else I am determined to communicate with Michael Grunberg in good faith because I think every time I do so it strengthens my ultimate position one way or the other and gets me back to a position of more an equal which I lost when I inexplicably lost the litigation. That was part of the reason I went up to see him on Friday. Creating an open line of communication and a decent relationship with him is a no loose proposition.

My feeling at the moment is to let Michael sit until you can get the \$34m offer in writing. Once I receive it to send it to him with an analysis that it is a 13.6x annual rent roll so he knows how I extrapolate the MK report and suggest to him that perhaps we have fools for clients and should not represent ourselves and propose that you and Knakal meet in sort of a non-binding kind of arbitration type situation, which Michael once suggested during the litigation.

What do you think?

**Sent:** Saturday, March 26, 2005 8:12 PM  
**Subject:** Re: 55th Street

Bruce - You're absolutely correct. The multiples found in the Massey Knakal show that the latest sales bespeak of values far higher than a 12x gives them for a \$24M value. Bob Knakal told me to my face not two weeks ago about the sale of 25 Fifth Avenue at almost 20x gross income....and I think our location is even better. We'll try to get the written offer as early in the week as possible. I can be reached on my cell for the beginning of the week. Jerry

-----Original Message-----

M153

3/27/2005

**EXHIBIT F**

**Bruce M. Meisel**

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From: <jnblock@aol.com>  
To: <Meiselpa@covad.net>  
Sent: Wednesday, April 13, 2005 10:49 PM  
Subject: Re: 55th Street

Bruce - I received and read Michael Grunberg's response to your letter. He certainly sounds like a sarcastic and vindictive person, but that's OK...it's just talk and bluster. It is true that the discount allowed by the IRS is for estate tax and gift tax purposes however, as we both know, this situation is not either one of those. We know that and so does he. It's irrelevant who drew the documents...we are here at this juncture now. I continue to wonder what a good real estate litigator would make of the agreement when Fanny passes on and her interest in this property passes on to her children....do they just get her 70% interest and now you undertake the management and ongoing operation or does the management and operation continue with her heirs? And even if it does pass on to you, would a 70% partner not control the decisions anyway? I agree with you that you have to talk to an attorney. I've already started to make calls into the ones I think would be good for you. Let me find out if they're available next week. I'll be in my office in the early afternoon tomorrow.

-----Original Message-----

From: Bruce M. Meisel <Meiselpa@covad.net>  
To: jerry block <jnblock@aol.com>  
Sent: Wed, 13 Apr 2005 17:15:46 -0400  
Subject:

I sent a fax to you at home. My schedule opened up next week. I think it might be a good idea for me to put a lawyer in place sooner than later. Can we schedule something for next week?

I would be most interested in your view on the e-mail I received today. I will be home this evening or in the office tomorrow.

Thanks.

M139

4/14/2005



**EXHIBIT G**

**Bruce M. Meisel**

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From: <jnblock@aol.com>  
To: <Meiselpa@covad.net>  
Sent: Thursday, May 12, 2005 11:04 AM  
Subject: Re: 55th Street

Bruce - 12-14 West 55th (2 buildings) and 16-18 West 55th (2 buildings) sold for a total of \$22M. According to the records of the Real Estate Board of New York, there were a total of 42 units consisting of stores, offices and apartments. At this point with this scant information, it's impossible to tell how many apartment units were controlled, stabilized or free market. Assumedly, the lower the sales price, the more controlled and stabilized units there are since the purchaser has to allow for buyout stipends. However, what's even more interesting is that in the Income Statement reported by the Board, which is supplied by ownership, the net income for the individual buildings was in a range of 40% to 66% of gross income!!! In addition, the Boards' records reflect a total area for the four buildings at approximately 36,000 square feet which would reflect about \$611/sf. Multiply that by your square footage and you'll see that it validates all our numbers and that \$12M is the right place to begin. Would you like to discuss this further? I'll be in my office all day and most of tomorrow. However, I'll be staying at the Pearl River Hilton Saturday night for a wedding and if you thought there was reason to meet to discuss things further I'd be happy to meet with you there in the afternoon. Since I'll be there for my purpose, there'll be no charge for my time. Jerry

**REDACTED**

— Original Message —

From: [jnblock@aol.com](mailto:jnblock@aol.com)  
To: [Meiselpa@covad.net](mailto:Meiselpa@covad.net)  
Sent: Wednesday, May 11, 2005 3:54 PM  
Subject: 55th Street

Bruce - Sidney Rosenthal just called to inform me that four buildings across the street from you at 12-14-15-18 West 55th Street just sold for \$22M. They have a total of 80 feet of frontage and consist of a 5 and 6 story building with offices and a store and another 5 and 6 story building with just 23 apartments and stores. This price probably reflects the possession issues. So there is activity on the block.

M420

5/12/2005

**Bruce M. Meisel**

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From: <jnblock@aol.com>  
To: <Meiselpa@covad.net>  
Sent: Thursday, May 12, 2005 1:51 PM  
Subject: Re: 55th Street

Bruce - Yes, it means that it is more than reasonable to apply at least a 19x multiple to your properties. What better comp could one have than the property across the street? This not only confirms the 25 Fifth Avenue multiple but it says you don't have to own a Fifth Avenue property to achieve such a multiple. In answer to your second question, there's no doubt in my mind that once the Grunbergs saw that you now brought in a law firm with the reputation, strength and depth of M&E they realized you are preparing to go after them in a more serious way. This was also a way for you to declare that you continue to know they are taking advantage of the situation and that you're not going to take it any longer.....that you're drawing a line in the sand. They know what they've been doing and now realize you're prepared to go after them for it. Who knows, they might even have known from their counsel that you could still have come after them for all of the infractions after the last court decision but as long as you did nothing about it, why should they have changed their ways. That's why MG sent you this last letter which was so self serving. He's beginning to protect himself and build a file with words he'll try to put in your mouth. The initial letter to him from M&E was like a shot across the bow...now he's on notice...and by his last letter to you it shows he's beginning to scramble. I think you've put him on the defensive.

-----Original Message-----

From: Bruce M. Meisel <Meiselpa@covad.net>  
To: jnblock@aol.com  
Sent: Thu, 12 May 2005 12:36:29 -0400  
Subject: Re: 55th Street

Jerry: Does this mean that applying a 19 times multiple for my properties is reasonable? What do you make of Grunberg's sudden epiphony to renovate and rent these vacant apartments that have been withheld from the market for so many years?

----- Original Message -----

From: jnblock@aol.com  
To: Meiselpa@covad.net  
Sent: Thursday, May 12, 2005 11:42 AM  
Subject: Re: 55th Street

Bruce - I have deleted the letters you sent pursuant to your directions. Further analysis indicates that, according to the Boards' records, 12-18 West 55th Street sold at a Gross Rent Multiple of 19.486, thereby confirming our estimates and Massey Knakals' multiplier of 19+ for 25 Fifth Avenue. As one would understand, this high GRM results in a very low 2.8% cap rate for the sale of the properties across the street.

-----Original Message-----

From: Bruce M. Meisel <Meiselpa@covad.net>  
To: jnblock@aol.com  
Sent: Thu, 12 May 2005 11:10:54 -0400  
Subject: Re: 55th Street

Thank you for the analysis which I have forwarded on to my attorneys. Thanks also for the offer on Saturday. Let's talk tomorrow as you could be coming up at a critical time. Bruce

| ----- Original Message -----

M421

5/12/2005